IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.4.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.178 of 2004

The Commissioner of Income Tax-I
Trichy. .. Appellant

Vs

M/s.Iskraemeco Seahorse Ltd.,
Trichy .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, 'B' Bench dated 26.8.2003 made in I.T.A.No. 1620/Mds/1996 for the assessment year 1992-93 against the order of the Commissioner of ;Income Tax (Appeals) III Madras dated 6.5.96 in T/WT/GT/Appeals No. ITA.No. 24/95-96 against the order of Deputyy Commissioner of Income tax Special Range III, Madras-34 dated 10.3.95 in PAN/GIR. 47-031-CT-0852/7-S.

For Appellant : Mr.N.Muralikumaran
Sr.Standing Counsel (IT)
For Respondent: No appearance

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

This appeal is directed against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench dated 26.8.2003 made in I.T.A.No.1620/Mds/1996 for the assessment year 1992-93, raising the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding, citing the decision of the Supreme Court in Commissioner of Income-tax V. Indo Nippon Chemicals Co. Ltd., 261 ITR 275, that the assessee was correct in valuing the closing stock net on MODVAT credit when the same method of valuation has not been adopted for the opening stock?"

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2.1. The assessee Company formerly known as M/s.SIMCO Engineering Ltd., filed its return for the assessment year 1992-93 claiming a loss of Rs.3,51,98,473/-. The assessment was completed under Section 143(3) of the Income Tax Act, determining the loss at Rs.3,15,09,085/-. The loss was thus reduced on account of certain additions made, of which the main addition was in respect of valuation of closing stock amounting to Rs.13,67,168/-. While the assessee valued the closing stock at net of MODVAT, the Assessing Officer, finding that the assessee has not given any explanation for excluding the element of MODVAT credit, held that the assessee's method of valuation of closing stock was not acceptable and accordingly disallowed loss to the extent of Rs.13,67,168/-.

2.2. On appeal by the assessee, the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer holding that the change in method of accounting adopted by the assessee resulted in increase of loss and there was nothing on record to show that the change was made with any bona fide intention.

2.3. On further appeal by the assessee, the Tribunal, applying the ratio laid down by the Apex Court in Commissioner of Income-tax V. Indo Nippon Chemicals Co. Ltd., [2003] 261 ITR 275, held the issue in favour of the assessee. Hence, the present appeal raising the substantial question of law referred to above.

3. Mr.N.Muralikumaran, learned Senior Standing Counsel for the appellant fairly concedes that the controversy in this appeal stands concluded by the decision of the Apex Court in CIT v. Indo Nippon Chemicals Co. Ltd., [2003] 261 ITR 275.

4. In CIT v. Indo Nippon Chemicals Co. Ltd. [2003] 261 ITR 275, the Apex Court held that merely because the Modvat credit was an irreversible credit available to manufacturers upon purchase of duty-paid raw material, that would not amount to income which was liable to be taxed under the Act : income was not generated to the extent of the Modvat credit on unconsumed raw material; and that it was not permissible for the Assessing Officer to adopt the "gross method" for valuation of raw materials at the time of purchase and the "net method" for valuation of stock on hand.

5. The Division Bench of the Bombay High Court in Commissioner of Income-tax v. Parle Biscuits Ltd., [2006] 282 ITR 547 following the decision of the Apex Court in CIT v. Indo Nippon Chemicals Co. Ltd., referred supra, held that MODVAT credit is not income liable to be taxed and upheld the deletion of the addition made to the closing stock on account of Modvat credit.

6. In view of the law laid down in the decisions referred supra, we find that the Tribunal was right in following the decision of the Supreme Court in CIT v. Indo Nippon Chemicals Co. Ltd., referred supra, and

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deleting the addition made to the closing stock on account of MODVAT credit. The issue raised is answered in favour of the assessee and against the Revenue.

This appeal is, therefore, dismissed. No costs.

sasi

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "B", Chennai.

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

3.The Commissioner of Income
Tax (Appeals)-III, Chennai.

4.The Commissioner of
Income Tax, TN-III,
Chennai.

5.The Deputy Commissioner of
Income Tax, Special Range-III
Chennai-34.

+ One cc to M. N. Muralikumaran, Advocate sR 27456

HPR (co)
sg 7/5/07

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